

J.T. MARTIN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 94-128-A
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 28, 1994

On June 6, 1994, the Board of Indian Appeals received a notice of appeal from J.T. Martin, pro se. Appellant sought review of an April 12, 1994, decision of the Billings Area Director, Bureau of Indian Affairs, cancelling Lease No. C57-28 on the Northern Cheyenne Reservation.

The notice of appeal appeared to be untimely. However, there was an unsigned, handwritten note on a copy of the Area Director's decision attached to the notice of appeal. The note stated: "Letter picked up in person May 5, 1994." Appellant's notice of appeal was postmarked June 3, 1994, and would have been timely if the handwritten note accurately recorded appellant's receipt of the decision. In the pre-docketing notice for this appeal, the Board requested that the Area Director notify the Board if his records showed that appellant received the decision more than 30 days before June 3, 1994.

The Board received the administrative record on June 27, 1994. In a cover memorandum, the Area Director stated that the April 12, 1994, decision had been mailed to appellant by certified mail and that, because the receipt for certified mail had been lost, Area Office personnel had contacted the Postmaster in Birney, Montana, where appellant lives, to verify receipt of the decision by appellant. The Postmaster's response is included in the administrative record. It shows that the decision was signed for by Maria Martin, who failed to write the date of pickup. However, the Postmaster states that her records show it was picked up between April 21 and April 28, 1994.

Assuming pickup occurred on April 28, 1994, the last date possible according to the Postmaster's records, this appeal is untimely. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed but is dismissed as untimely. Accordingly, the Area Director's April 12, 1994, decision is final for the Department of the Interior.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge